

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION**

**TERRY HARRIS, DOROTHY
WATFORD, ET AL.,**

Plaintiffs,

VS.

JOSEPH BORG,

Defendant.

[illegible]

CASE NO.: 2:05CV1083-MEF

MOTION FOR A STATUS CONFERENCE
AND
A REVISED UNIFORM SCHEDULING ORDER

COMES NOW the Defendant, who asks the Court to hold a status conference in this matter and to revise the Uniform Scheduling Order it has entered herein. As grounds, therefore, Defendant shows as follows:

1. The current scheduling order provides for a schedule for dispositive motions that cannot be reasonably met.
2. The Court's Order of May 12, 2006 requires that potentially dispositive motions be filed by September 26, 2006.
3. The Defendant cannot file his dispositive motions by such date for several reasons:
 - a. No discovery has taken place. Despite the Defendants efforts since before the scheduling order was issued (See Defendant's Motion to Compel dated 4/4/06) and his continual efforts thereafter, the Defendant has been unable to secure the Plaintiffs' timely cooperation with discovery. The Defendant has finally secured the Plaintiffs' promises of appearances at depositions noticed for November 3, 2007 and November 7, 2006 and fervently hopes that Plaintiffs will appear as promised. Nevertheless, those depositions will not be in time to be used in dispositive motions as now scheduled. The Defendant has undertaken no discovery whatsoever.

b. Preliminary issues remain to be resolved. Defendant currently has pending before the Court his motion to dismiss the Plaintiffs' class action allegations and claims based on the Plaintiffs' failure to take any actions to establish such a right and failure to comply with the Court's instructions in establishing that right. The resolution of this issue will greatly simplify this action and will instruct the Defendant as to the issues and claims he needs to test by motions for summary judgment. In light of the Plaintiffs' failure to pursue these claims, Defendant reasonably doubts the Plaintiffs' seriousness in pursuing them.

c. The Defendant has substantial defenses, including immunity defenses, which the Court should hear before proceeding. He does need the deposition of the Plaintiffs to establish those defenses.

4. A status conference would greatly benefit the parties and the Court in determining whether the Plaintiffs actually intend to pursue their claims in this matter and could prevent a waste of the Court's and the parties' time.

WHEREFORE, the Defendant asks the Court to hold a status conference and to provide reasonable dates for Defendant's dispositive motions in a revised Uniform Scheduling Order.

s/Bruce J. Downey, III
BRUCE J. DOWNEY, III
ASB-9205-W86B

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CERTIFICATE OF SERVICE

I hereby certify that on this the 25th day of October, 2006, I have electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to the following:

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s/Bruce J. Downey, III
OF COUNSEL